



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes**      MNDC, MNSD, FF

### **Introduction**

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenants. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain the security deposit in partial or full satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord for the cost of this application.

At the outset of the hearing, it was determined that the tenants had sent evidence packages to the landlord, and the landlord stated that she had not received the last package. The tenants provided proof that the evidence was sent to the landlord at the address provided by the landlord. I find that the evidence was served in accordance with the *Act*, and therefore it is considered in this Decision. The evidence package of the landlord was received by the received by the Residential Tenancy Branch 3 days prior to the hearing, and the Rules of Evidence require that it be received and delivered to the other party at least 5 days before the hearing. The tenants stated that the evidence was not provided to the tenants at all. The landlord stated that she sent it to the tenants but did not provide proof of that mailing. Therefore, the evidence received late by the landlord cannot be considered, and all other evidence and testimony provided by the parties has been reviewed and is considered in this Decision.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to return of all or part of the security deposit?

### **Background and Evidence**

This fixed term tenancy began on October 1, 2010 and was to expire on September 30, 2011, although the undisputed evidence of the parties is that the tenants never moved into the rental unit. Rent in the amount of \$1,200.00 per month was payable in advance on the 1<sup>st</sup> day of each month, and on September 6, 2010 the landlord collected a security deposit from the tenants in the amount of \$600.00.

The landlord testified that the tenancy was subject to identifying the tenants and completing background checks, and the subjects were not removed. On September 8, 2010 the tenants told the landlord that they did not want to rent the unit; they had wanted to meet the tenants in the lower unit of the house, and the landlord obliged. She also testified that the tenants advised they couldn't move in on time because they had to fly to the US with their twins because the father of one of the tenants was ill in hospital and they would be gone for a few weeks. She told the tenants that she understood but would hang on to the security deposit until the unit was rented because the tenancy agreement was signed. She further testified that on September 7, 2010 another family approached her to rent the whole house, but the landlord declined because she had already accepted a security deposit.

The landlord also testified that on September 20, 2010 the tenants asked her to sign a Mutual Agreement to End Tenancy which was mailed to her on September 22, 2010. They told her they would move in and wanted to take some measurements of the unit so she agreed to meet them on September 30, 2010. She stated that she waited for over an hour but the tenants did not show.

The landlord met with the tenants on October 1, 2010 at the rental unit where she gave them the keys. She gave them a Mutual Agreement to End Tenancy, but the male tenant looked around the unit and said that they don't want to rent it and he wanted the landlord to sign the agreement he had sent to the landlord which stated that the security deposit would be returned forthwith, and the tenant would not sign the one provided by the landlord.

On October 7, 2010, the landlord received a letter stating that the tenants had a right to move in because the landlord still had the security deposit. She stated that they changed their minds several times.

The tenants testified that they agreed to rent the upper unit of the house, but the landlord wanted them to rent the downstairs unit as well for another \$200 or \$300 per month and they couldn't afford that. A couple of days later, they signed the tenancy agreement for the upper unit only.

On September 8, 2010 the landlord called the tenants stating that she had a tenant that would rent the whole house so if they wanted out of the agreement, now would be the time. She then told the tenants that the tenants in the lower unit would share laundry with them, which was not mentioned prior to the tenancy agreement being signed. They further testified that the landlord told them that a person living in another lower unit would have to walk through their suite; it had no private entrance or kitchen. The tenants talked about it and decided to tell the landlord they wanted to cancel the agreement, but the landlord advised she would be keeping the security deposit.

The tenants also testified that they had several conversations in which the landlord yelled at them a lot and hung up on them. They stated they tried their best to work it out.

On September 29, 2010 the landlord sent an email to the tenants asking to meet at noon the next day. The tenants emailed and phoned the landlord stating that they couldn't be available until 6:00, and when they arrived, the landlord did not show. When the parties met on October 1, 2010, the landlord provided a Mutual Agreement to End Tenancy, but nothing in that document indicated that the tenants would get back the security deposit. The landlord verbally agreed to return it, but because she yelled at the tenant, he did not trust that she would return it.

After the tenants discussed the situation again, they called the landlord agreeing to sign the agreement, but the landlord refused. They then sent it back to her unsigned hoping to meet with the landlord again, they would sign it together and obtain a copy of the tenancy agreement, but that didn't happen. The tenants felt that the landlord's statement about the lower level tenants walking through their unit was used as a threat after the parties had verbally agreed to end the tenancy.

The tenants also testified that on or about September 8, 2010 the unit was listed for rent again. The tenants felt the landlord was pushing them out of the agreement.

In response, the landlord testified that the unit had been posted for rent, but she cancelled that advertisement on September 7, 2010. She also testified that the person in the lower level of the house would only be walking through this rental unit until the tenants moved in, and then they would walk through the downstairs unit to access the unit that had no private entrance or kitchen, and would share the bathroom with the lower level tenant. The lower level tenants moved out on January 18, 2011.

The landlord was asked during cross examination if she emailed the tenants on September 29 or 30 asking to meet at noon on September 30<sup>th</sup>, but the landlord's response was that she did not remember.

The landlord was also asked during cross examination when the lower level was advertised for rent, to which she responded that she did not remember.

### **Analysis**

I have reviewed the tenancy agreement provided by the parties, and note that on the addendum, paragraph 3 states: "The acceptance of the rental agreement by the landlord is subject to satisfactory reference check and receipt of satisfactory copies of personal identifications of all intended tenants." The landlord testified that the subjects were never satisfied.

I also accept the evidence of the tenants that the landlord had not told them before signing the tenancy agreement that they would have to share laundry facilities with another tenant. I further find that the landlord had not told them prior to signing the agreement that another tenant would be walking through their unit until they moved in, or perhaps even after they moved in, because that unit had no private access, bathroom or kitchen. After the tenants moved in, the landlord would then tell the other tenants that they would have to share a bathroom and access doors with the tenant who had no bathroom or access. The other tenant who lived in the lower level who did have a bathroom didn't move out until mid-January, 2011. I cannot accept the evidence of the landlord that the tenants were bound by the agreement.

In the circumstances, I find that the landlord was not entirely truthful to the tenants, and I find that the tenants were justified in breaking the agreement. I further find that the subjects on the addendum to the rental agreement were never removed or satisfied.

### **Conclusion**

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I order that the landlord return the security deposit to the tenants. The tenants are also entitled to recovery of the \$50.00 filing fee for the cost of this application, and I grant a monetary order pursuant to Section 67 of the Residential Tenancy Act for the balance

due of \$650.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 15, 2011.

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Residential Tenancy Branch